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4 **IN THE UNITED STATES DISTRICT COURT**

5 **FOR THE DISTRICT OF ARIZONA**

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7 Estate of Clinton Dewayne Smith, et al.,

No. CV-18-00323-TUC-RCC

8 Plaintiffs,

ORDER

9 v.

10 John T. Shartle, et al.,

11 Defendants.

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14 Pending before the Court is Defendant United States' Motion for Temporary Stay of

15 Discovery Pending Resolution of Motion to Dismiss. (Doc. 111.) This matter has been fully

16 briefed. (Docs. 111, 118, 121.) This case has proceeded in an unusual manner, resulting in

17 the disjointed status of discovery that now exists between Defendant United States

18 ("Defendant United States") and Defendants John Domitrovich, et al. ("*Bivens*

19 Defendants"). As fully outlined below, in the interests of promoting judicial economy and

20 resolving the current fragmentation in the discovery process, the Court grants the motion.

21 a. Relevant Facts

22 The procedural history of this case is extensive and will not be summarized in its

23 entirety here. There are, however, a number of points the Court wishes to highlight. On July

24 2, 2018, Plaintiffs filed their first *Bivens* complaint against two named wardens and seven

25 un-named defendants arising out of the death of Clinton Dewayne Smith. (Doc. 1.) Since

26 that time, Plaintiffs have filed several amended *Bivens* complaints against shifting

27 individual government employees, culminating in the operative fourth amended complaint

28 against sixteen *Bivens* Defendants. (Doc. 103.)

1 In the interim, on June 20, 2019, Plaintiffs filed a separate Federal Tort Claims Act
2 (“FTCA”) action against the United States arising out of the same event. (Doc. 1, Case No.
3 CV-19-00325-TUC-RCC.) On June 28, 2019, the Court consolidated the two actions
4 pursuant to Local Rule 42. (Doc. 44.) After consolidation, Defendant United States filed its
5 Motion to Dismiss for Lack of Jurisdiction on October 5, 2019. (Doc. 64.) With this motion
6 pending, the Court issued an order finding that, pursuant to Federal Rule of Civil Procedure
7 12(a)(4) and General Order 17-08(A)(6), Defendant United States was not required to
8 provide discovery under the Mandatory Initial Discovery Pilot (“MIDP”) until “the Court’s
9 ruling on the pending Motion to Dismiss and the remaining parties’ answers or Rule 12
10 motions.” (Doc. 84.) Subsequently, the Court denied Defendant United States’ Motion to
11 Dismiss. (Doc. 92.) After filing its answer (Doc. 93), Defendant United States disclosed
12 “approximately 2,900 pages of documents, including staff rosters, inmate files, and
13 investigation documents concerning the death of Smith.” (Doc. 111 at 6.)

14 On June 26, 2020, Plaintiffs filed their fourth amended *Bivens* complaint. (Doc. 103.)
15 *Bivens* Defendants then filed their Motion to Dismiss. (Doc. 109.) As of October 28, 2020,
16 this matter has been fully briefed. (Docs. 103, 109, 128, 134.) The Court has yet to rule on
17 the pending Motion to Dismiss.

18 The issue currently before this Court follows Plaintiffs’ request for discovery from
19 Defendant United States. (Doc. 111-1.) Plaintiffs’ request included records of inmate-on-
20 inmate violence and details of “the involvement of all individuals who decided or
21 effectuated the cell placement of Romeo Giovanni and Clinton Smith [and] every
22 reason and any rationale as to why Romeo Giovanni was celled with Clinton Smith”
23 (Doc. 111-1 at 9–10.) Defendant United States recognizes that it will eventually provide
24 this information as part of the discovery process, but it asks this Court to temporarily stay
25 discovery pending resolution of *Bivens* Defendants’ Motion to Dismiss. (Doc. 111 at 12–
26 15; Doc. 121 at 5.)

27 In relevant part, Defendant United States argues that the discovery request, although
28 not directed at *Bivens* Defendants, inextricably involves information relating to Plaintiffs’

1 claim against these sixteen individuals. (Doc. 111 at 13.) Plaintiffs contend that “[t]he fact
2 that the discovery may finally reveal which Bureau of Prisons official did what with respect
3 to the circumstances in this case . . . is of no consequence to the Court’s analysis.” (Doc.
4 118 at 3.) Additionally, Plaintiffs urge the Court to avoid further delay, noting that the
5 information requested will eventually be disclosed as the FTCA claim against Defendant
6 United States proceeds. (*Id.* at 7, 9.)

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8 b. Discussion

9 Although motions to stay discovery are generally disfavored, “[a] district court has
10 discretion to stay civil proceedings in the interest of justice and in the light of the particular
11 circumstances of the case.” *Moreno v. Maricopa Cty. Corr. Health Servs.*, No. CV-17-
12 01074-PHX-DJH (JFM), 2018 WL 3154470, at *3 (D. Ariz. June 28, 2018) (citing *Grubbs*
13 *v. Irely*, No. Civ. S-0601714 RRB GGH, 2008 WL 906246, at *1 (E.D. Cal. Mar. 31, 2008);
14 *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings
15 is incidental to the power inherent in every court to control the disposition of the causes on
16 its docket with economy of time and efforts for itself, for counsel, and for litigants.”).

17 As the parties correctly observe, Plaintiffs’ FTCA claim against Defendant United
18 States will proceed. This includes the attendant discovery. Nonetheless, Plaintiffs had this
19 valid FTCA claim at the time they filed their original *Bivens* action. While Plaintiffs relay
20 the difficulty they have had litigating this case given the “secretive” nature of the events
21 (Doc. 118 at 9), the fact remains, had Plaintiffs filed these claims together, the trajectory of
22 discovery from all defendants would have proceeded on the same timeline. However,
23 because of the unique procedural history of the case, this did not happen. Instead, Defendant
24 United States provided initial discovery before the fourth amended *Bivens* complaint and
25 subsequent Motion to Dismiss.

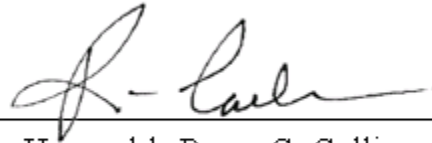
26 The Court would like to resolve the disjointed nature of this case moving forward in
27 light of the circumstances and in the interests of judicial economy. Therefore, the Court will
28 temporarily stay additional discovery until the resolution of the pending Motion to Dismiss

1 as to *Bivens* Defendants. This will allow all parties to proceed on the same timeline and
2 offer more clarity.

3 Furthermore, the Court does not believe that the information requested by Plaintiffs
4 is necessary at this point to the extent it could have supported Plaintiffs' claims against
5 *Bivens* Defendants. With regard to the fourth amended *Bivens* complaint, Plaintiffs need
6 only meet the pleading standard. Of possible assistance, Plaintiffs now have more than
7 2,000 pages of discovery including staff rosters, daily logs, inmate rosters, post orders, and
8 policies and program statements. (Doc. 121 at 4–5.)

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10 **IT IS ORDERED GRANTING** the Motion for Temporary Stay of Discovery
11 Pending Resolution of Motion to Dismiss. (Doc. 111.)

12 Dated this 16th day of November, 2020.

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16 Honorable Raner C. Collins
17 Senior United States District Judge
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